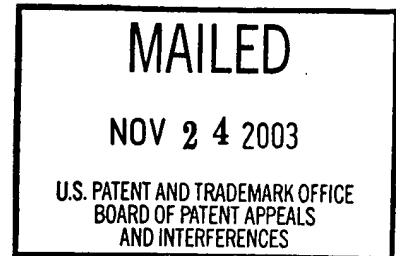


UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte MARTIN HAUPT
and
FRANZ KLETZL

Application 09/090,035



ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was received at the Board of Patent Appeals and Interferences on November 3, 2003. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the examiner. The matters requiring attention prior to docketing are identified below.

In an amendment (Paper No. 13) filed August 21, 2000, applicants requested that claim 19 be canceled. Appellants requested an addition of "new" claims 19 and 20 in an amendment

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(Paper No. 20) filed January 24, 2002. According to Paper No. 26 (Non-final Rejection filed December 19, 2002), page 2, no. 1:

The numbering of claims is not in accordance with 37 CFR 1.126 which requires the original number of the claims to be preserved throughout the prosecution. When claims are canceled, the remaining claims must not be renumbered. When new claims are presented, they must be numbered consecutively beginning with the number next following the highest numbered claims previously presented (whether entered or not).

This has not been done. The claims submitted in the Amendment (Paper No. 20) filed January 24, 2002 as claims 19 and 20 should be renumbered by the examiner as claims 20 and 21, respectively. Upon entry of claims 20 and 21, a corrected Supplemental Appeal Brief and Appendix should be filed with the claims correctly numbered 1, 3 through 18 and 20 through 21. Following submission of the Supplemental Appeal Brief and Appendix, the examiner should vacate the original Examiner's Answer (Paper No. 29, filed May 20, 2003) and prepare a new Examiner's Answer with the correct claim numbering for claims 1, 3 through 18 and 20 through 21.

Accordingly, it is

ORDERED that the application is being returned to the examiner for resolution of the following issues:

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- correct entry and proper numbering of claims 19 and 20 (as presented in Paper No. 20) to claims 20 and 21;
- resubmission of a Supplemental Appeal Brief and Appendix to include these current newly numbered claims by appellants;
- vacating the original Examiner's Answer (Paper No. 29) by the examiner;
- preparation of a new Examiner's Answer with correct numbering for claims 1, 3 through 18 and 20 through 21; and
- for any further action as may be appropriate.

BOARD OF PATENT APPEALS
AND INTERFERENCES



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RA04-0079

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